

to the Debtors' certificates, charters or articles of incorporation or by-laws, applicable state law or specific agreement or any combination of the foregoing, shall survive Confirmation, remain unaffected thereby and not be discharged irrespective of whether indemnification, defense, reimbursement or limitation is owed in connection with an event occurring before, on or after the Petition Date.

37. Modifications, Amendments, Supplements, Restatements or Other Agreements. Unless otherwise provided in the Plan or this Order, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements or other agreements that in any manner affect such Executory Contract or Unexpired Lease and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan. Modifications, amendments, supplements and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the chapter 11 cases shall not be deemed to alter the prepetition nature of the Executory

Contract or Unexpired Lease, or the validity, priority or amount of any Claims that may arise in connection therewith.

38. Reservation of Rights. Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the list of Executory Contract and Unexpired Lease to be Rejected, nor anything contained in the Plan or this Order, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder.
39. Distributions Under the Plan. All distributions under the Plan shall be made in accordance with Article VII of the Plan.
40. Undeliverable Distributions and Unclaimed Property. In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Distribution Agent has determined the then-current address of such Holder, at which time such distribution shall be made to such Holder without interest; provided, however, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of one year from the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Reorganized Debtors automatically and without need for a further order by the Bankruptcy Court (notwithstanding any

applicable federal, provincial or state escheat, abandoned or unclaimed property laws to the contrary) and the Claim of any Holder to such property or interest in property shall be discharged and forever barred.

41. Operation as of the Effective Date. As of the Effective Date, unless otherwise provided in the Plan or this Order, the Reorganized Debtors may operate their businesses and may use, acquire and dispose of property and settle and compromise Claims and Equity Interests and objections or motions with respect thereto without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules or the Local Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provision of the Bankruptcy Code.

42. Discharge of Claims and Termination of Equity Interests. Pursuant to section 1141(d) of the Bankruptcy Code and except as otherwise specifically provided in the Plan or this Order or in any contract, instrument or other agreement or document created pursuant to the Plan, the distributions, rights and treatment that are provided in the Plan or this Order shall be in complete satisfaction, discharge and release, effective as of the Effective Date, of Claims, Equity Interests and causes of action of any nature whatsoever, including any interest accrued on Claims or Equity Interests from and after

the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against and Equity Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Equity Interests, including demands, liabilities and causes of action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Equity Interests relate to services performed by employees of the Debtors prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not: (a) a Proof of Claim or Equity Interest based upon such debt, right or Equity Interest is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (b) a Claim or Equity Interest based upon such debt, right or Equity Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (c) the Holder of such a Claim or Equity Interest has accepted the Plan. Any default by the Debtors or their Affiliates with respect to any Claim or Equity Interest that existed immediately prior to or on account of the filing of the chapter 11 cases shall be deemed cured on the Effective Date.

43. Release of Liens. Except as otherwise provided in the Plan (including with respect to the Liens securing the New Term Loan), this Order or in any contract, instrument, release or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, in satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Debtors' estates shall be fully released and discharged and all of the right, title and interest of any Holder of such mortgages, deeds of trust, Liens, pledges or other security interests shall revert to the Reorganized Debtor and its successors and assigns.
44. Releases by the Debtors. **As provided for in Article XI.B. of the Plan, pursuant to section 1123(b) of the Bankruptcy Code, as of the Effective Date and subject to the release by the Releasing Parties in Article XI.B.2. of the Plan, the Debtors are authorized to release all of the Releasing Parties from any and all Causes of Action held by, assertable on behalf of or derivative from the Debtors, in any way relating to the Debtors, the chapter 11 cases, the Plan, negotiations regarding or concerning the Plan and the ownership, management and operation of**

the Debtors; provided, however, the foregoing shall not operate as a waiver of or release from any Cause of Action arising out of any express contractual obligation owing by any former director, officer or employee to the Debtors or any reimbursement obligation of any former director, officer or employee with respect to a loan, advance made by the Debtors to such former director, officer or employee and is not a waiver or release for any attorneys retained in connection with the Chapter 11 Cases from claims by their respective clients.

45. Limited Releases by the Releasing Parties. As provided for in Article XI.B. of the Plan, in consideration for the releases by the Debtors in XI.B.1. of the Plan and other valuable consideration, except as otherwise provided under the Plan, as of the Effective Date, each of the Releasing Parties, in any capacity, at its option, is authorized to generally release the Debtors, the Reorganized Debtors and their respective subsidiaries and affiliates, in each case in any capacity, from any and all Causes of Action held by, assertable on behalf of, or derivative from such Releasing Party, in any way relating to the Debtors, the Chapter 11 Cases, the Plan, negotiations regarding or concerning the Plan and the ownership, management and operation of the Debtors. The releases by the Debtors in Article XI.B.1 of the Plan

shall be provided only to Releasing Parties who execute and deliver to the Debtors a release as provided for in Article XI.B.2. and in a form acceptable to the Debtors.

46. **Exculpation.** The Bankruptcy Court has jurisdiction under 28 U.S.C. § 1334(a) and (b) to approve the exculpation set forth in Article XI.C. of the Plan. In addition, section 105(a) of the Bankruptcy Code permits the approval of the exculpation set forth in Article XI.C., when, as here, such provision is essential to the formulation and implementation of the Plan as provided in section 1123 of the Bankruptcy Code, confers material benefits on the Debtors' estates, is fair and reasonable and is in the best interests of the Debtors, their estates and Holders of Claims and Equity Interests. Except as otherwise specifically provided in the Plan or Plan Supplement, neither the Debtors, the Reorganized Debtors, the Senior Secured Agent, the Senior Secured Parties, the Creditors' Committee or their respective employees, officers, directors, current or former members or professionals shall have or incur any liability to any entity for any postpetition act taken or omitted to be taken in connection with or related to the formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the consummation of the Plan, the Disclosure Statement or any contract,

**instrument, release or other agreement or document created or entered into in connection with the Plan or any postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors unless such suit is commenced in all instances before the Court, which Court shall have original jurisdiction over all such suits.**

- 47. Injunction. The Bankruptcy Court has jurisdiction under 28 U.S.C. § 1334(a) and (b) to issue the injunction set forth in Article XI.D of the Plan. In addition, section 105(a) of the Bankruptcy Code permits the approval of the exculpation set forth in Article XI.D, when, as here, such provision is essential to the formulation and implementation of the Plan as provided in section 1123 of the Bankruptcy Code, confers material benefits on the Debtors' estates, is fair and reasonable and is in the best interests of the Debtors, their estates and Holders of Claims and Equity Interests. Except as otherwise expressly provided in the Plan or for obligations issued pursuant to the Plan, from and after the Effective Date, all entities are permanently enjoined from commencing or continuing in any manner against the Debtors or the Reorganized Debtors, their successors and assigns and their assets and properties, as the case may be, any suit, action or other proceeding, on account of or respecting any Claim, demand, liability, obligation, debt, right, Cause of**



**Action, interest or remedy released or to be released pursuant to the Plan or the Confirmation Order.**

- 48. Except as otherwise expressly provided for herein or in obligations issued pursuant the Plan, from and after the Effective Date, all entities shall be precluded from asserting against the Debtors, the Debtors in possession, the Debtors' estates, the Reorganized Debtors, any of their successors and assigns, any other Claims or Equity Interests based upon any documents, instruments or any act or omission, transaction or other activity of any kind or nature that occurred before the Effective Date.**
- 49. The rights afforded in the Plan and the treatment of all Claims and Equity Interests herein shall be in exchange for and in complete satisfaction of Claims and Equity Interests of any nature whatsoever, including, without limitation, any interest accrued on claims from and after the Petition Date, against the Debtors or any of their assets, property or estates. On the Effective Date, all such Claims against and Equity Interests in the Debtors shall be fully released and discharged. Except as otherwise expressly provided for herein or in obligations issued pursuant hereto from and after the Effective Date, all Claims against and Equity Interests in the Debtors shall be fully released and discharged and the Debtors' liability with respect thereto shall be**

**extinguished completely, including, without limitation, any liability of the kind specified under section 502(g) of the Bankruptcy Code. All entities shall be precluded from asserting against the Debtors, the Debtors' estates, the Reorganized Debtors, each of their respective successors and assigns and each of their assets and properties, any other Claims or Equity Interests based upon any documents, instruments or any act or omission, transaction or other activity of any kind or nature that occurred before the Effective Date.**

50. Term of Injunction or Stays. Unless otherwise provided in the Plan or this Order, any injunction or stay arising under or entered during the chapter 11 cases under sections 105 or 362 of the Bankruptcy Code or otherwise that is in existence on the Confirmation Date shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.
51. Conditions to Effective Date. The Plan shall not become effective unless and until the conditions set forth in Article X.A of the Plan have been satisfied or waived, with the consent of the Secured Agent, which consent shall not be unreasonably withheld, pursuant to Article X.B. If the consummation does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan, this Order or the Disclosure Statement

shall: (a) constitute a waiver or release of any claims by the Debtors, or holders of Claims or Equity Interests; (b) prejudice in any manner the rights of the Debtors, any Holders, or any other Entity; or (c) constitute an admission, acknowledgment, offer or undertaking by the Debtors, any Holders or any other Entity in any respect.

52. Retention of Jurisdiction. This Court may properly, and upon the Effective Date shall, retain jurisdiction over the matters arising in, and under, and related to, the chapter 11 cases, as set forth in Article XIII of the Plan and section 1142 of the Bankruptcy Code.
53. Additional Documents. Pursuant to Article XIV.M of the Plan, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or Reorganized Debtors, as applicable, and all Holders of Claims or Equity Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

54. Payment of Statutory Fees. On the Effective Date, and thereafter as may be required, the Distribution Agent shall pay all fees payable pursuant to section 1930 of chapter 123 of title 28 of the United States Code.
55. Plan Supplement. The documents contained in the Plan Supplement, and any amendments, modifications and supplements thereto, and all documents and agreements introduced into evidence by the Debtors at the Confirmation Hearing (including all exhibits and attachments thereto and documents referred to therein), and the execution, delivery and performance thereof by the Reorganized Debtors, are authorized and approved. Without further order or authorization of this Court, the Debtors, Reorganized Debtors and their successors are authorized and empowered to make any modification to all documents, which documents, as modified, shall be in form and substance reasonably satisfactory to the Senior Secured Parties, included as part of the Plan Supplement that are consistent with the Plan, including Article XIV and the New Term Loan. Execution versions of the documents comprising the Plan Supplement shall constitute legal, valid, binding and authorized obligations of the respective parties thereto, enforceable in accordance with their terms and, to the extent applicable, shall create, as of the Effective Date, all liens and security interests purported to be created

thereby without further action or the need for the filing with any applicable state or local authority.

56. Return of Adequate Assurance Deposit. Upon the Effective Date, all funds in the Adequate Assurance Deposit Account established by the Debtors pursuant to the Final Order Determining Adequate Assurance of Payment for Future Utility Service [Docket No. 154] shall be returned to the Debtors.
57. Limited Governmental Approvals. With the exception of the required regulatory approvals of the HPUC and the FCC set forth in Article X.A of the Plan, this Order shall constitute all approvals and consents required, if any, by the laws, rules or regulations of any state or other governmental authority with respect to the implementation or consummation of the Plan and Disclosure Statement, any documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and Disclosure Statement.
58. Effectiveness of All Actions. All actions authorized to be taken pursuant to the Plan shall be effective on, prior to or after the Effective Date pursuant to this Order, without further application to, or order of the Court, or further action by the respective officers, directors, members or stockholders of the Debtors or Reorganized Debtors and with the effect that such actions had

been taken by unanimous action of such officers, directors, members or stockholders.

59. Approval of Consents and Authorization to Take Acts Necessary to Implement Plan. Pursuant to section 1142(b) of the Bankruptcy Code, section 303 of the Delaware General Corporation Law, section 414-288 of the Hawaii Revised Statutes and any comparable provision of the business corporation laws of any other state, each of the Debtors and the Reorganized Debtors hereby is authorized and empowered to take such actions and to perform such acts as may be necessary, desirable or appropriate to comply with or implement the Plan, the Plan Supplement, and all documents, instruments, securities and agreements related thereto and all annexes, exhibits, and schedules appended thereto, in each case, related to the Plan.
60. Plan and Confirmation Order Mutually Dependent. This Order shall constitute a judicial determination and shall provide that each term and provision of the Plan is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the Debtors' consent; and (c) nonseverable and mutually dependent.
61. Approval of Settlement. A settlement by and among the Debtors, the Senior Secured Agent and the Creditors' Committee (and its individual members) is hereby approved as set forth in the subsections below:

(a) Waiver of Appeal Rights: The Creditors' Committee and its individual members shall be deemed to have waived their right to appeal entry of this Order and the Bankruptcy Court's Findings of Fact and Conclusions of Law.

(b) Allowance of Creditors' Committee's Professional Fee Claims. Notwithstanding anything to the contrary in the Cash Collateral Order, the Debtors shall be authorized to pay any Allowed Professional Fees Claims of the Creditors' Committee's Professionals in full and in Cash in accordance with the relevant orders of the Court, provided, however, that any and all Lien Investigation/Prosecution Fees and accrued and unpaid Professional Fee Claims of the Professionals retained by the Creditors' Committee as of the Effective Date shall not be Allowed on a final basis to the extent such Lien Investigation/Prosecution Fees and accrued and unpaid Professional Fee Claims cause the Emergence Costs to exceed \$20 million in the aggregate. Any such fees and expenses that have been paid but are subsequently not Allowed shall be returned promptly to the Reorganized Debtors.

(c) No Success, Transaction or Similar Fees. Any Professional Fees Claims asserted by Professionals retained by the Creditors' Committee on account of "success," "transaction" or similar fees shall not be Allowed. Professional Fee Claims asserted by the Creditors' Committee's financial advisors on account of services rendered after December 18, 2009 shall not be Allowed.

(d) Withdrawal of Counterclaims and Appeal in Adversary Proceeding. Upon entry of this Order, the counterclaims asserted by the Creditors' Committee in the adversary proceeding styled as *Lehman Commercial Paper, Inc. v. The Official Committee of Unsecured Creditors of Hawaiian Telcom Communications, Inc.*, Adv. Pro. No. 09-90023, pending in the United States District Court for the District of Hawaii (the "Adversary Proceeding") and the Creditors' Committee's appeal of the Bankruptcy Court's August 20, 2009, ruling to the United States District Court for the District of Hawaii shall be deemed withdrawn with prejudice. To the extent issues related to the Senior Secured Obligations have not been adjudicated in the Adversary Proceeding, the Creditors' Committee will be deemed



to have consented to entry of an order granting such claims in favor of the Senior Secured Agent.

(e) Withdrawal of Request for Advisory Opinion.

Within three business days of entry of this Order, the Creditors' Committee shall withdraw with prejudice its request for an advisory opinion from the Hawaii Public Utilities Commission with respect to the validity and extent of the liens securing the Senior Secured Obligations.

(f) Regulatory Assistance. To the extent requested by the Debtors or the Senior Secured Agent, the Creditors' Committee and its attorneys shall use commercially reasonable efforts to expedite the approval by the Federal Communications Commission and the Hawaii Public Utilities Commission of the Plan and the transactions contemplated therein.

62. Reversal. If any of the provisions of this Order are hereafter reversed, modified or vacated by a subsequent order of the Bankruptcy Court or any other court, such reversal, modification or vacatur shall not affect the validity of the acts or obligations incurred or undertaken under, or in connection with, the Plan prior to receipt of written notice of such order by the Debtors. Notwithstanding any such reversal, modification or vacatur of

this Order, any such act or obligations incurred undertaken pursuant to, and in reliance on, this Order prior to the effective date of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Order, the Plan, all documents relating to the Plan and any amendments or modifications to any of the foregoing.

63. Confirmation Order Supercedes. This Order shall supercede any Bankruptcy Court orders issued prior to the Confirmation Date that may be inconsistent with this Order.
64. Notice of Entry of Confirmation Order. The Reorganized Debtors shall service notice of entry of this Order pursuant to Bankruptcy Rules 2002(f)(7), 2002(k) and 3020(c) on all Holders of Claims and Equity Interests, the Office of the United States Trustee for the District of Hawaii and other parties in interest, by causing notice of entry of this Order to be delivered to such parties by first-class mail, postage prepaid, as soon as practicable after entry of this Order. Such notice is adequate under the particular circumstances and no other or further notice is necessary.
65. Notice of Effective Date. As soon as practicable after the occurrence of the Effective Date, the Reorganized Debtors shall file notice of the Effective Date and shall serve a copy of same on all creditors and interest holders, the Office of the United States Trustee for the District of Hawaii and other

parties in interest. Such notice is adequate under the particular circumstances and no other or further notice is necessary.

66. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

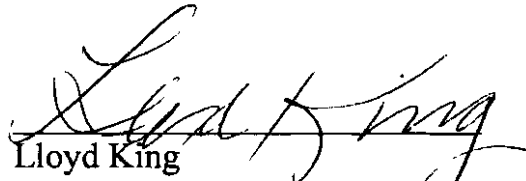
67. Recording. The Debtors and the Reorganized Debtors are hereby authorized to deliver a notice or short form of this Order, with the Plan attached, to any state or local recording officer and such officer must accept for filing such documents or instruments without charging any stamp tax, recording tax, personal property transfer tax, mortgage or other similar tax. Such notice (a) shall have the effect of an order of this Court, (b) shall constitute sufficient notice of the entry of this Order to such filing and recording officers and (c) shall be a reasonable instrument notwithstanding any contrary provision of non-bankruptcy law. The Bankruptcy Court specifically retains jurisdiction to enforce the foregoing direction, by contempt or otherwise.

68. Conflicts Between This Order and the Plan. The provisions of the Plan and of this Order shall be construed in a manner consistent with each other so as to effect the purposes of each; provided, however, that if there is determined to be any inconsistency between any Plan provision and any provision of

this Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of this Order shall govern and any such provision of this Order shall be deemed a modification of the Plan and shall control and take precedence.

69. Final Order. This Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof.

Dated: Honolulu, Hawaii, Dec. 30, 2009.

  
Lloyd King  
United States Bankruptcy Judge

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In re Hawaiian Telcom Communications, Inc., et al., Chapter 11,  
Case No. 08-02005; ORDER CONFIRMING THE JOINT CHAPTER 11 PLAN OF  
REORGANIZATION OF HAWAIIAN TELCOM COMMUNICATIONS, INC. AND ITS  
DEBTOR AFFILIATES

**Exhibit A**

**THE PLAN**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF HAWAII

In re:	)	
	)	Chapter 11
	)	
HAWAIIAN TELCOM	)	Case No. 08-02005 (LK)
COMMUNICATIONS, INC., <u>et al.</u> , <sup>1</sup>	)	
	)	
Debtors.	)	Jointly Administered
	)	

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**JOINT CHAPTER 11 PLAN OF REORGANIZATION OF HAWAIIAN  
TELCOM COMMUNICATIONS, INC. AND ITS DEBTOR AFFILIATES**

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Co-Counsel for the Debtors and Debtors in Possession

Dated: **December 30, 2009**

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: Hawaiian Telcom Communications, Inc. (0376); Hawaiian Telcom Holdco, Inc. (9868); Hawaiian Telcom, Inc. (9500); Hawaiian Telcom Services Company, Inc. (5722); Hawaiian Telcom IP Service Delivery Investment, LLC (9423); Hawaiian Telcom IP Service Delivery Research, LLC (9685); Hawaiian Telcom IP Video Investment, LLC (9295); and Hawaiian Telcom IP Video Research, LLC (9571). The location of the Debtors' corporate headquarters and the service address for all Debtors is: 1177 Bishop Street, Honolulu, HI 96813.

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